

§504 of the Rehabilitation Act of 1973

- This session will distinguish between §504 and IDEA'04, with an emphasis on the ADAA and common mistakes school districts and staff make in their implementation of federal civil rights and education laws.

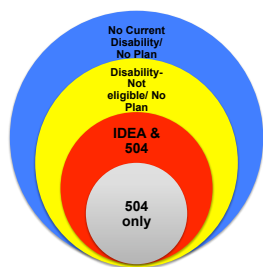
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Relationship to Other Laws

- Title VI, Civil Rights Act of 1964
- 20 U.S.C. Chapter 70, ESEA, 1965
- Title IX, 1972 Educational Amendments
- Rehabilitation Act of 1973 & '92, [Section 504](#)
- EHA, 1974 Education of the Handicapped Act
- 42 U.S.C. Chapter 21, Section 1983
- Americans with Disabilities Act, 1999
- No Child Left Behind Act, 2002 (ESEA)
- IDEA'04
- Americans w/Disabilities Act Amendments (2009)

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The Student Population

ADAA: Intent of Congress

Not amended to address school issues—
Focus was on employment issues of
returning Veterans who could not get
health related supports, college, etc.

Emphasizes that determination of
“disability” should not require extensive
analysis.

Impact on schools does require
“rethinking”...

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Most recent ADAA regulations

- ◆ Use of service animals public settings § 36.104
 - Any dog (or miniature horse) that is individually trained to work (perform disability-mitigating tasks)
 - Work must directly relate to individual's disability
 - Work **not** defined as emotional support, well-being, comfort or companionship; such work does not qualify for public access rights.
 - Animal must behave and be “housebroken”
 - May ask only: (1) Is animal required because of disability? And (2) What work or task has the animal been trained to do?

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More recent ADAA regulations

- ◆ Public access issues
 - Use of manual or power driven mobility devices
 - Accessible and companion seating at events
 - Unobstructed path of travel and line of sight in assembly areas
 - Use of Interpreters

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FEDERAL LAW-§ 504

29 U.S.C. Sec.794

- “No otherwise qualified individual with disabilities in the United States, shall, solely by reason of disability, be excluded from participation in , be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

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Purpose of Section 504

- Civil rights legislation applied to persons with disabilities
- Impacts entities that receive federal funds--does not supply additional funds
- Legislative intent is to prevent discrimination based on disability

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DISCRIMINATION

34 C.F.R. 104.4(b)

Discrimination is a negative action: the exclusion from participation in, or the denial of benefits of, any program or activity receiving or benefiting from federal financial assistance. Students may not be denied participation in or be denied benefit from services that are afforded to nondisabled students.

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Evidences of Discrimination

- ◆ The district denies or limits:
 - Equal access and opportunity to participate
 - Equally effective aids, benefits or services
 - Enjoyment of rights, advantages enjoyed by others
 - Opportunity to participate strictly because of an individual's disability, OR
- The district aids or perpetuates discrimination by assisting another agency that discriminates, or by allowing the existence of a hostile environment.

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Harassment/ Hostile Environment

- ◆ School knows, or reasonably should know
- ◆ Immediate and appropriate investigation
- ◆ Prompt & effective steps to end harassment, prevent its recurrence, & eliminate any hostile environment
- ◆ Hostile environment: harassment is sufficiently severe, pervasive or persistent to inhibit student's participation, benefits or opportunity

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Basic Requirements of §504 (Appendix, Part 104 Analysis, Subpart D)

- Eligible students receive a FAPE & are educated with nondisabled students to the maximum extent possible
- Schools shall seek to identify and serve all students who may need service
- Evaluation procedures are appropriate and avoid misclassification
- Procedural safeguards are utilized

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§ 504 Civil Rights

- Protection from discrimination
- "504" + impairments
- Substantial limitation of a major life activity
- Regular education
- FAPE: meet needs as well as needs of nondisabled are met

IDEA'04 Instruction

- Instruction: prepare for work, ind. living
- specific disabilities
- Adverse effect on ed. performance & special ed required
- Special education
- FAPE: reasonably designed to confer educational benefit

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What's the Difference?

Section 504

- A substantial limitation in a major life activity area due to impairment

IDEA

- Adverse effect to the extent special education is required

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What is special education under § 504?

- Special education under the civil rights statutes and regulations is a decision for the local education agency to make in conformance with whatever other local, state, and Federal laws (IDEA) apply. [OCR Letter, 23 IDELR 504 (1995)]
- One court has ruled that sp ed under 504 is the same as sp ed under IDEA. [20 IDELR 164 (1993)]

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Procedures Requirements §504

- Designation of compliance officer
- Grievance Procedures
- Notice of non-discrimination
- Child Find
- FAPE for eligible students

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FAPE

- A free appropriate public education must be offered in accordance with appropriate procedures in:
 - Evaluation
 - Placement
 - Re-evaluation
 - Procedural Safeguards

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“Appropriate”

Section 504

“an education designed to meet the individual needs of the disabled as adequately as the educational needs of the nondisabled are met”

**Equal Opportunity and
Equal Access!**

IDEA

“an education reasonably designed to confer benefit”

Instruction!

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§504 Individual with disabilities

An Individual with disabilities has:

- Physical or mental impairment
 - 1) any physiological disorder or condition, disfigurement or anatomical loss;
 - 2) any mental or physical disorder
- Record of impairment, or
- Is regarded as having impairment

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“Record of” or “regarded as”

- ◆ Protected from discrimination solely due to the perception of disability. Seldom applicable to students.
- ◆ Only students who may have an impairment that substantially limits a major life activity are eligible for referral, evaluation, and possible accommodations through a § 504 Plan.

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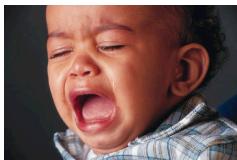
Major Life Activity *

- Congress (ADAA) specifically rejected the assumption that an individual who has performed well academically cannot be substantially limited in activities such as learning, reading, thinking, or speaking.
- Each area is a major life activity area, and not dependent upon performance in any other area.

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Major life activities (ADA)

- The term includes “those basic activities that the average person in the general population can perform with little or no difficulty [29 C.F.R. § 1630.2(l)]



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Major Life Activities

- A. Major Life Activities are functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, etc. [§104.3(j)(2)(ii)]

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Major Life Activities (ADAA+)

- **Added January 1, 2009 are:**
“reading, concentrating, thinking, communicating, eating, sleeping, walking, standing, lifting, etc.”
- “The ability to perform one or more tasks within a broad category does not preclude coverage.”

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Major Life Activities (ADAA+)

Added January 1, 2009:

B. Operation of major bodily functions, including functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

The scope of major life activities is expanded.

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“Substantially limits”

ADA [29 C.F.R. 1630 (2)(j)(2)]

- Impairment must substantially limit one or more major life activities:
 - Unable to perform a major life activity that the average person can perform, or
 - Substantially limited as to the condition, manner or duration under which activity is performed

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“Substantially limits” comments

- OCR states that the decision of whether a particular impairment “substantially limits” a major life activity area is a determination of the school district. [23 IDELR 504 (OCR, 1995)]
- School §504 Team
- Develop and follow district procedures!

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Substantial limitation Verified!

- Report cards
- Norm-referenced assessments
- Curriculum-based
- Structured interventions
- Social & health history
- Medical reports
- Other
- Evaluation materials must document that the performance of the student in school is caused by an impairment and is substantially less than that of the average student.

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Substantial Limitation: Major Life Activity Area of Reading, Thinking...

- Comparison to the average student in general population
- Lack of success in reading, thinking, learning, etc.
- Diagnostic Significance (substantially limits)



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Learning problems can and do occur for reasons other than a disability!

- ◆ Cultural, environmental and economic factors
- English Language Learners
- Substance Abuse
- Divorce, Abuse & other family problems (frequent relocations, etc.)

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“Substantially limits” & ADAA

- Retains the definition of disability under Section 504 & the ADA, but emphasizes that the definition should be interpreted broadly:
 - **Mitigating measures not to be considered**
 - **Impairment that is episodic or in remission is a disability if it would substantially limit when active**

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Mitigating Measures Must Not be Considered: Disability Determination

- ...devices or practices that a person uses to correct for or reduce the effects of that person's mental or physical impairments.



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Mitigating Measures (ADAA 09)

Example:

- A student's medication may alleviate many symptoms of ADHA, but this may not affect the determination of whether the student has a disability.
- It may be considered, however, in determining what the student needs in the way of accommodations. What is the area of substantial limitation?

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Mitigating Measures (ADAA 09)

"Inactive" Disability?

Student may have a disability, but not require a plan if there is no substantial limitation on a major life activity due to mitigating measures or remission.

What record identifies the student as a student with a disability?

Issues of discipline in this circumstance—there is no 504 Plan, so we may not be alert to the existence of the disability.

Might the school be guilty of overlooking the requirement for a manifestation determination?

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Disciplinary Issues

- Apply disciplinary removals (11 days) as per IDEA
- Relationship between misconduct and the disability
- Reevaluation prior to change of placement
- FAPE in accordance with state law
- Student has an "inactive" disability

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Eligibility Decision Process

- Always begin with a problem
- Identify presence of an impairment
- Impairment must be determined to substantially limit a major life activity or bodily function; i.e. disability.
- NOTE: The actual presence of an identified impairment is not sufficient to qualify as Section 504 eligible.

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Eligibility for a 504 Plan

- Current Impairment and
- Substantial limitation in a major life activity when compared to average student in the general population



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SECTION 504 PLAN



- Not to be used as a “consolation prize”
- Not meant to solve the problems of the general education program
- Not to be “given” because parents want special consideration or don’t want IEP
- Purpose: Prevent discrimination and ensure equal access/opportunity!

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CONTENTS: 504 PLAN

- Accommodations that are required to provide:
 - Access to an education designed to meet needs of the disabled as adequately as the non-disabled
 - Opportunity to participate in all school activities, including assessments, non-academics and extra-curricular activities

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BE ALL THAT YOU CAN BE



- ◆ A PROMISE from the ARMY.... not Section 504!
- ◆ Section 504 is not intended to fulfill dreams or desires, or to assure better test scores!

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Major Eligibility/Plan Errors

ERRORS

- Ignore the cause--just focus on symptoms
- Impairment equals eligibility
- Rely on parent for all data about impairment

REQUIREMENTS

- Must have a current disability
- Must document a substantial limitation
- How does the disability impact performance at school?

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Another Eligibility/Plan Error

ERROR

- "Psychic Hotline"
- "He'll have trouble next year, so let's give him a § 504 Plan now!"

REQUIREMENT

- You must document the presence of a current disability that substantially limits a major life activity NOW.

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Other eligibility/Plan errors

ERROR

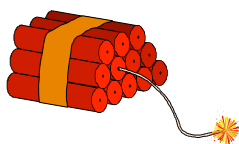
- “Learning” means just reading, or math, or social studies, or
- “He is capable of making much higher grades.”

REQUIREMENT

- The disability must substantially limit any major life activity area (learning, reading, thinking, eating, sleeping, etc)
- Comparison is to the average student in the general population--not self.

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Implementation Problems



- “remedial” plan
- Accommodations not required for access/opportunity
- Plan is “lost”
- Termination of 504- (Reevaluation)
- Failure to review

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Common Compliance Issues

- Development of Plan without appropriate evaluation
- Failure to document Team decisions
- Failure/refusal to consider evaluations by outside professionals
- Fixed limitations on home/hospital services
- Failure to transfer 504 documents
- Failure to review plan & evaluate before a change in placement.

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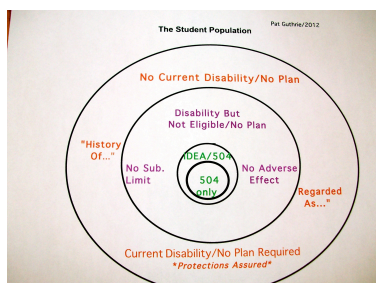


More Compliance Issues

- Failure to respond to evaluation request
(May refuse but must give rights statement)
- Failure to implement Plan in regular education setting
- Exclusion/limitation on participation in electives, field trips, extra-curricular etc.

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The Student Population



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SECTION 504 and the ADA

Your efforts continue.....

Resources:

<http://www.ada.gov/>

<http://www2.ed.gov/about/offices/list/ocr/504faq.html>

Guthrie, P. (2011). *Section 504 and ADA: Promoting student access: A resource guide for educators*. Warner Robins, GA: Council for Administrators of Special Education. [800-585-1753; 1-478-333-6892]

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